law differentiating it from the Roman lien, which required neither passage of title nor possession.

The translation of the Constitution is markedly superior to that of the Civil Code. Unfortunately this is the least needed part, for we already had an English version of the Constitution, parallel to the Spanish, in "American Constitutions," by Rodriguez (International Bureau of the American Republics, Government Printing Office, Washington, 1906).

The translation of the Code contains such samples of muddy thinking and bad English as the following definition of actions for the enforcement of rights over things. Article 2790 (2756), "Real actions are the means of enforcing the declaration in court of the existence, plentitude and liberty of real rights, with the accessory effect, if it lie, of indemnity for the damage caused"; or, again, Article 2275 (2241), "The thing delivered by the lender to the borrower must be consumable, or fungible, even though not consumable."

The passage of a subsequent law, November 2, 1888, governing civil marriage, intended to be incorporated into the Code in the place of Articles 159 to 239, inclusive, has resulted in confusion in the proper numeration of the articles of the Code. We think that the translator has only added to it by placing two sets of figures opposite each article. Whatever may have been the legislative intent as to changing the numeration of the articles upon incorporating the law of civil marriage, it was found that the coexistence of an old and new style numeration lead to uncertainty and error in references. In the latest editions (Lajouane, 1914) the original numeration is retained and the Law of Civil Marriage is printed separately as an appendix. In the decisions of the courts, the old numeration alone is referred to, so that in Joannini's translation only the lighter type figures in brackets should that in Joannini's translation only the lighter type figures in brackets should be heeded.

We also find the amendments to Articles 1032 (998), 1035 (1001) and 1037 (1003) have not been incorporated. It would seem that some Argentine text prior to the official text printed in New York had been used, since in Article 555 (521) the translator retains the negative suppressed in the later texts, thus of course reversing the sense of the article.

The task of the translator is surely not an easy one, and, though we have pointed out some weak points, the volume is certainly to be welcomed as one of the best of the Comparative Law Bureau's publications.

Layton B. Register.

"WAIVER" DISTRIBUTED AMONG THE DEPARTMENTS, ELECTION, ESTOPPEL, CONTRACT AND RELEASE. By John S. Ewart. Pp. XX, 304. Cambridge: Harvard University Press; London: Oxford University Press, 1917.

Most of the books which come to the reviewer's desk are works intended for the use of the practical lawyer to assist him in finding the law as written and decided. Occasionally a real law book reaches him, one which makes a distinct contribution to the science and philosophy of jurisprudence.

The book before us confines itself to an examination of the meaning of a technical term most familiar to the profession through daily use in several

different branches of the law and the writer presents a really startling conclusion that "waiver," a word so glibly used as representing a distinct legal category, is in fact not a true legal conception at all. He examines the history and evolution of the doctrines which are supposed to be embodied in and represented by "waiver" and comes to the conclusion that all so-called "waivers" may be distributed among the four departments or titles of the law, Election, Estoppel, Contract and Release, and that therefore, the use of the word "waiver" should be abandoned. That this is not merely a question of nomenclature, but one of real practical significance is amply illustrated by citations from the authorities. To select only one illustration, from the relation between "waiver" and estoppel, the courts reached the following impossible conclusions:

1. "Waiver" rests upon estoppel. But estoppel is not the basis of "waiver."

2. "Waiver" and estoppel may be used indiscriminately and interchangeably; the one is only another name for the other. But "waiver" and estoppel are not convertible terms.

3. "Waiver" must have some of the elements of estoppel. But "waiver" need not combine the elements of estoppel.

4. There ought to be something in the nature of an estoppel in order to constitute a "waiver." But there is not.

5. Where "waiver" is proved "the party will be estopped." But the distinction between them "is not in all respects clearly defined."

The value of works such as this cannot be overestimated. Words are labels, more or less accurate, and mischief follows immediately when these labels are used as though they connoted definite ideas. Illustrations might be drawn from politics, religion, sociology and law, in fact from every department of human thought. He who pricks these bubbles by pointing out the limitations in the use of large words performs a most useful service in the interest of clear thought.

This book of Mr. Ewart's is cordially recommended to the bench and bar. It is a keen incisive analysis of numerous adjudicated cases and the conclusions reached by the writer as to the fallacies arising from the use of the word "waiver" are irresistible. Would that all law books were of this character, instead of being mere index-digests of the decisions which overburden our shelves and ourselves, so that the average lawyer may in the words of an ancient Rabbi be said to be "an ass carrying a burden of books."

The history of Mr. Ewart's work in this field is interesting and instructive for the purpose of showing how misconceptions flourish long after they have been exposed. In 1905 Mr. Ewart published an article entitled "Waiver in Insurance Cases" in 18 Harvard Law Review, 364-378, in which he outlines the theory which he has very fully developed in his book. In 1912 Mr. George Richards published an article entitled "Parol Waiver under the New York Fire Policy" in 12 Columbia Law Review, 134-144. If this writer had been familiar with Mr. Ewart's earlier work the difficulties with which he wrestles would have disappeared.

In the same volume of the Columbia Law Review Mr. Ewart publishes another article on pages 619-624, entitled "Election in Insurance Companies"

in which he restates the principles of the earlier article. The courts, with one notable exception, paid no attention to Mr. Ewart's work and continued to use the word "waiver" which Mr. Ewart had pointed out in his articles as not only useless, but misleading and promoting injustice. In one court, however, namely, the Supreme Court of Indiana in the case of Modern Woodmen v. Vincent, 40 Ind. App. 741, 80 N. E. 427 (1907), note was made of his article and of his conclusions. In 1914 Mr. R. D. Bowers, of the New Mexico Bar, published a book on the "Law of Waiver." If he had been familiar with Mr. Ewart's work, much of his book, valuable though it is, would either not have been written or would have been entirely different in reasoning and conclusion. Mr. Bowers has just published a book on the "Law of Conversion" in which he has a chapter entitled "Waiver of Conversion," virtually a branch of the law of Election of Remedies. The same old fallacies are here re-stated, although it is admitted in Section 562 "it has been thought that the expression 'waiving the tort and suing on the contract' is misleading." It is submitted that Mr. Ewart's work demonstrates beyond doubt that the use of the phrase "waiver" is not only misleading but harmful.

One word more. At the end of his article "Waiver of Election" in 29 Harvard Law Review, 724-730, Mr. Ewart states: "I have prepared for the press a dissertation with the title 'Waiver distributed into Election, Estoppel, Contract and Release,' but four publishing firms have declined it. It is said to be 'highly meritorious' and so on, but it is only 350 pages, and a small book is as bothersome as one yielding larger returns. The encyclopedias and the stenographers are rapidly depriving lawyers of any claim to be members of the learned professions."

Fortunately Mr. Ewart was able to find two University Presses willing to publish his book for the greater glory of the Law and benefit of the Bar.

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UNFAIR COMPETITION. By William H. S. Stevens, Ph.D. Pp. 265. Chicago: University of Chicago Press, 1917.

Perhaps few federal legislative enactments in recent years will prove of such far-reaching effect as section five of the Federal Trade Commission Act, which declares unlawful "unfair methods of competition in commerce" and empowers and directs the commission to prevent the employment of such methods. It would be difficult to imagine a phrase of more general potential application, or one permitting a wider discretion in its definition and construction, than the term "unfair competition."

It was clearly the purpose of Congress not to restrict the judgment of the Federal Trade Commission and to allow a wide range of discretion in the administration of this provision. The question with which the commission is confronted under this section of the act is one that in its essence is economic rather than legal.

The common law has heretofore concerned itself with certain restraints